

1 HONORABLE RICHARD A. JONES
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9
10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 JAMES McNELIS,
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15 Plaintiff,

16 v.

17 THE PRUDENTIAL INSURANCE
18 COMPANY OF AMERICA,

19 Defendant.

20 Case No. 2:19-cv-01590-RAJ

21 ORDER

22 **I. INTRODUCTION**

23 This matter comes before the Court on Plaintiff's Motion to Quash and for a
24 Protective Order. Dkt. # 29. For the reasons below, the motion is **DENIED**.

25 **II. BACKGROUND**

26 Plaintiff James McNelis ("Plaintiff") brought this action against Defendant The
27 Prudential Insurance Company of America's ("Defendant" or "Prudential") alleging two
28 claims under the Employment Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.*
("ERISA"): (1) Plaintiff seeks a declaration from the Court that he is disabled and
thereby entitled to long term disability ("LTD") benefits under an ERISA-governed
employee benefit plan and an order directing Prudential to pay those benefits pursuant to
29 U.S.C. § 1132(a)(1)(B); and (2) Plaintiff alleges that Prudential breached its fiduciary

1 duties towards him and requests equitable relief to redress those violations and enjoin
 2 Prudential from further violating its duties pursuant to 29 U.S.C. § 1132(a)(3). Dkt. # 4
 3 at 1-2. Plaintiff filed a motion for judgment pursuant to Federal Rule of Civil Procedure
 4 52 on his first claim, Dkt. # 26, and has pursued discovery beyond the administrative
 5 record on the second claim, requesting depositions from Michael Larmi, a Prudential
 6 Appeals Specialist, and Dr. Kevin Hayes, a Prudential physician. Dkt. # 31-1 at 2.

7 Defendant now moves the Court to quash subpoenas issued for Dr. Hayes and Mr.
 8 Larmi and for a protective order to preclude Plaintiff from taking their depositions. Dkt.
 9 # 29 at 1. Defendant argues that Plaintiff's second claim for equitable relief under
 10 § 1132(a)(3) is duplicative of his first claim under § 1132(a)(1)(B), and, as such, Plaintiff
 11 has "no basis to expand discovery beyond the usual limitations of an LTD benefits case
 12 under ERISA." Dkt. # 29 at 2.

13 III. DISCUSSION

14 Pursuant to 29 U.S.C. § 1132(a)(1)(B), a beneficiary may bring a civil action to
 15 "recover benefits due to him under the terms of his plan, to enforce his rights under the
 16 terms of the plan, or to clarify his rights to future benefits under the terms of the plan."
 17 Under 29 U.S.C. § 1132(a)(3), a beneficiary may bring a civil action "to enjoin any act or
 18 practice which violates any provision of this subchapter or the terms of the plan, or (B) to
 19 obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any
 20 provisions of this subchapter or the terms of the plan."

21 While discovery in § 1132(a)(1)(B) claims is typically limited to the
 22 administrative record, it is not similarly constrained in § 1132(a)(3) claims. *Jensen v.*
23 Solvay Chemicals, Inc., 520 F. Supp. 2d 1349, 1355 (D. Wyo. 2007). For claims arising
 24 under § 1132(a)(3), discovery reverts "into the traditional realm and is governed under
 25 traditional federal, circuit, and local procedure." *Id.* at 356. Rule 26(c) of the Federal
 26 Rules of Civil Procedure permits a court, on a showing of good cause, to issue a
 27 protective order "to protect a party or person from annoyance, embarrassment,
 28 ORDER – 2

1 oppression, or undue burden or expense.” Fed. R. Civ. P. 26. The party opposing
 2 discovery and seeking a protective order carries a “heavy burden of showing why
 3 discovery [should be] denied.” *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir.
 4 1975).

5 This Court has ruled that a plaintiff is not barred from seeking different remedies
 6 under § 1132(a)(3) and§ 1132(a)(1)(B). *See Hancock v. Aetna Life Ins. Co.*, 251 F. Supp.
 7 3d 1363, 1371-72 (W.D. Wash. 2017) (“[Plaintiff] is not precluded from bringing a
 8 Section 1132(a)(3) claim simply because she also brings a Section 1132(a)(1)(B)
 9 claim”); *see also Zisk v. Gannett Co. Income Prot. Plan*, 73 F. Supp. 3d 1115, 1118
 10 (N.D. Cal. 2014) (“Courts of this district have found that (a)(3) claims remain viable even
 11 when an (a)(1)(B) claim is asserted, particularly where the relief sought in connection
 12 with each claim is distinct.”). A plaintiff is, however, precluded from seeking duplicative
 13 relief in an ERISA action. *See* 251 F. Supp. 3d at 1369.

14 Here, Plaintiff distinguishes the equitable relief he is seeking under § 1132(a)(3) to
 15 “redress Prudential’s breach of its fiduciary duties” from the declaratory and
 16 compensatory relief he seeks under § 1132(a)(1)(B). Dkt # 31 at 5. Plaintiff’s equitable
 17 remedies sought include but are not limited to the following:

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 19 A. surcharge, to put Mr. McNelis in the position he would have attained but for
 Prudential’s breach of its fiduciary duties;

20 ...
 21 D. an injunction directing Prudential to establish administrative processes and
 22 safeguards to ensure and verify appropriately consistent decision making; and
 23 E. an injunction directing Prudential to train and/or supervise its employees to
 24 ensure that they are aware of, and follow, administrative processes and
 safeguards intended to ensure and verify appropriate and consistent decision
 making;

25 Dkt. # 4 at 40.

26 These remedies are not available under § 1132(a)(1)(B), which provides only for
 27 recovery of benefits due under the terms of a plan, enforcement of rights under the terms
 28

1 of the plan, or clarity on rights to future benefits. The remedies sought in Plaintiff's two
2 claims are not, therefore, duplicative. Plaintiff's second claim for equitable relief under
3 § 1132(a)(3) is thereby not limited by ERISA discovery rules, but rather governed by the
4 traditional rules of discovery. Because Defendant fails to show good cause for a
5 protective order limiting discovery to protect a party from "annoyance, embarrassment,
6 oppression, or undue burden or expense" the Court finds no justification to quash the
7 subpoenas issued to Dr. Kevin Hays and Michael Larmi or to preclude Plaintiff from
8 pursuing these and other relevant depositions.

9 **IV. CONCLUSION**

10 For the reasons stated above, the Court **DENIES** Defendant's motion to quash
11 subpoenas for depositions in this case. The Court also **DENIES** Defendant's request for
12 a protective order precluding Plaintiff from taking depositions.

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14 DATED this 26th day of August, 2020.

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The Honorable Richard A. Jones
United States District Judge